



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Arnold Smith, Police
Officer (S9999R), Township of
Irvington

List Removal Appeal

CSC Docket No. 2018-243

ISSUED: JULY 23, 2018

(ABR)

Arnold Smith appeals his removal from the Police Officer (S9999R), Township of Irvington (Irvington), eligible list on the basis of an unsatisfactory background report.

The appellant, a non-veteran, took the open competitive examination for Police Officer (S9999R), Irvington, which had a closing date of September 4, 2013. The subsequent eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on July 26, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory background report. In support, it submitted a copy of the appellant's Certified Driver's Abstract, which indicated that the appellant had been cited for unsafe operation of a motor vehicle in September 2005, improper display/fictitious plates and speeding in October 2005, careless driving in December 2006, failure to wear a seatbelt in August 2007, failure to observe a traffic control device in October 2011, and obstructing passage of other vehicles in June 2015. The appointing authority also submitted a copy of a Notification of Removal dated February 25, 2016 from the Department of Corrections (DOC). DOC's Notification of Removal indicated that it removed the appellant's name from the Correction Officer Recruit (S9988R), eligible list based, in relevant part, upon an unsatisfactory background report and an unsatisfactory employment record.¹

¹ It is noted that the appellant did not appeal his removal from the Correction Officer Recruit (S9988R) eligible list.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the appointing authority's removal of his name from the subject eligible list was unwarranted, as he does not possess an unsatisfactory background and he provided the appointing authority with all of the information and documentation he was asked to furnish. With respect to his background, he submits that he serves his community by working as a disc jockey at a variety of public events and mentoring youth interested in music and he maintains that he has never engaged in any illegal activities.

In response, the appointing authority argues that the appellant's unsatisfactory background report and his falsification of his pre-employment application support his removal from the subject eligible list. With respect to the unsatisfactory background report, the appointing authority cites the DOC's rejection of the appellant for appointment and his terminations by Garda World and East Coast Toyota. Concerning the appellant's falsification, the appointing authority asserts that the appellant failed to list each and every moving violation in his driving record in his response to Question 59 on its pre-employment application and it maintains that he gave contradictory explanations with respect to the end of his employment with Garda World and East Coast Toyota. Specifically, the appointing authority submits that the appellant indicated on Question 78 that he left East Coast Toyota to accept a position with Garda World and that he subsequently departed Garda World to accept a position with the United States Postal Service. It contends that those answers were dishonest, as the appellant later stated in response to Question 86 that he was terminated by both East Coast Toyota and Garda World. The appointing authority submits copies of the sections of the appellant's pre-employment application related to his employment history and driving record, a copy of DOC's Notification of Removal dated February 25, 2016 and the appellant's Certified Driver's Abstract.

In reply, the appellant states that he was not terminated from Garda World or East Coast Toyota. He contends that he quit East Coast Toyota to work for Garda World but was "listed as terminated for reasons unknown." He indicates that he was terminated by G4S Secure Solutions because he did not obtain a proper uniform in time to guard the site he was supposed to be assigned to. The appellant notes that he recorded in his pre-employment application that he was terminated by Garda World without stating why he was terminated. With regard to his driving record, the appellant maintains that his citation for obstructing passage of other vehicles in June 2015 was related to a car accident, but was ultimately dismissed. He proffers that his pre-employment application only listed the violations for failure to wear a seatbelt in August 2007 and failure to observe a traffic control device in October 2011 because they were the only violations listed on his five-year Certified Driver's Abstract.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. Additionally, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. See *In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In this matter, the appellant listed two motor vehicle citations on his application from August 2007 and October 2011 and failed to disclose five additional citations from October 2005 to August 2007 and June 2015. The appellant asserts that the reason he did not list the five additional infractions was that he was not aware of them, as they were not listed on the five-year Certified Driver's Abstract that he ordered from the Motor Vehicle Commission. Therefore, he argues that he did not intentionally mislead the appointing authority and these omissions should not be held against him. The Commission notes that the appellant presumably received tickets for all five additional offenses. Therefore, he should have been aware of these additional citations. Further, a candidate is responsible for the completeness and accuracy of their application. See *In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Regardless, the Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. Therefore, even if there was no intent to deceive, in light of the appellant's driving record, which included seven motor vehicle summonses, including a citation after the September 4, 2013 closing date, his failure to disclose these five additional summonses was material. At minimum, the appointing authority needed this information to have a complete understanding of the

appellant's background in order to properly evaluate his candidacy. *In the Matter of Dennis Feliciano, Jr.* (CSC, decided February 22, 2017). Specifically, the appointing authority needed this information in order to determine if the appellant's driving record showed a pattern of disregard for the law and questionable judgment. In this regard, the Commission notes that it has upheld the removal of law enforcement candidates in innumerable cases based on an unsatisfactory driving history.

Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999R), Irvington eligible list on the basis of an unsatisfactory background report.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF JULY, 2018



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